

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1510

WRIGHT GROUP, INC.

vs.

JAN PATRICK KANNALLY & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Wright Group Inc., appeals from an order of a single justice of this court that affirmed an order of a Superior Court judge awarding attorney's fees and costs to the defendant, Jan Patrick Kannally, and his enterprise, Northeastern Forensics Inc., pursuant to G. L. c. 231, § 6F. The single justice reviewed the record and affirmed the order of the Superior Court judge, finding "no error of law or abuse of discretion." We affirm.

Despite the plaintiff's attempt to reargue the underlying merits, our review of the single justice's order is "of extremely limited scope." Danger Records, Inc. v. Berger, 444 Mass. 1, 11 (2005). We "treat the underlying [\$ 6F] factual findings adopted and accepted by the single justice . . . as

¹ Northeastern Forensics, Inc.

'final' and . . . not themselves subject to further review." Fronk v. Fowler, 456 Mass. 317, 328 (2010), quoting Danger Records, supra at 12-13. "Thus, we review the single justice's decision only for abuse of discretion or other error of law." Id.

On appeal, the plaintiff claims that the defendants' counterclaim for abuse of process was dismissed, which therefore precludes the defendants' claim for attorney's fees. The plaintiff also argues that claim preclusion or issue preclusion applies here because of that dismissal. We disagree.

The plaintiff mischaracterizes the abuse of process claim and entwines it with the frivolousness standard for awarding attorney's fees. The dismissal of the abuse of process counterclaim does not preclude the defendants' claim for attorney's fees. The standard for awarding attorney's fees is that the claims pursued were "insubstantial, frivolous and not advanced in good faith." G. L. c. 231, § 6F. The abuse of process claim was dismissed because, although the plaintiff's intent in filing its suit might have been to disrupt the defendants' business operation, that alone was not enough for an abuse of process claim. Abuse of process requires a showing of an ulterior motive, which was not present here. See Laddy v. Polidor, 424 Mass. 196, 199-200 (1997). Additionally, neither the elements of claim preclusion nor issue preclusion is present

in this case. See DeGiacomo v. Quincy, 476 Mass. 38, 41-42 (2016); Kobrin v. Board of Registration in Med., 444 Mass. 837, 843 (2005). Here, there has been no prior judgment on the merits of a § 6F claim and there is only one adjudication on that matter.

In all, the record before us demonstrates no abuse of discretion or error of law by the single justice. The plaintiff "resisted for most of the life of this litigation both requests for discovery as well as the orders" of the Superior Court judge. Further, the record established that the defendant, Kannally, at no time entered into any postemployment restrictive covenants and that the material the plaintiff claimed were trade secrets were "devoid of content that could, even using the term broadly, be deemed trade secrets".

The defendants further request appellate attorney's fees and costs. We conclude they are entitled to such an award. In accordance with the procedure described in Fabre v. Walton, 441 Mass. 9, 10-11 (2004), the defendants shall have fourteen days from the issuance of the rescript in this case to file an application with appropriate support. The plaintiff may file an

opposition within fourteen days of service of the defendants' application.

Order of single justice
affirmed.

By the Court (Meade, Agnes &
Henry, JJ.²),

Joseph F. Stanton

Clerk

Entered: July 12, 2019.

² The panelists are listed in order of seniority.